NO. X06 UWY CV15 6050025 S	:	SUPERIOR COURT
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DONNA L. SOTO, ADMINISTRATRIX OF THE ESTATE OF	:	COMPLEX LITIGATION DOCKET
	:	
VICTORIA L. SOTO, ET AL.	:	AT WATERBURY
	:	
V.	:	
	:	
BUSHMASTER FIREARMS INTERNATIONAL, LLC, ET AL.	:	JUNE 30, 2021

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO REMINGTON'S SECOND MOTION TO STRIKE

Remington has been trying to avoid a jury verdict in Connecticut Superior Court since this case was filed. They have played every time-consuming, formalistic card known to lawyers who defend wrongdoing corporations – removal (DN 101), bankruptcy (two) (DN 258, DN 317), the motion to dismiss (DN 122), the motion to stay discovery (DN, 144), the motion to strike (DN 151), the petition for certiorari, the request to revise (DN 281). Presently before the Court is their latest attempt to avoid trial and forestall meaningful discovery – their Second Motion to Strike, filed despite the Supreme Court's holding in this case that the plaintiffs' wrongful marketing CUTPA claims are legally sufficient under Connecticut law.

Specifically, the Connecticut Supreme Court's opinion in this case holds that the plaintiffs' wrongful marketing CUTPA allegations are "sufficient to survive a motion to strike and [the plaintiffs] are entitled to have the opportunity to prove their wrongful marketing allegations." *Soto v. Bushmaster Firearms Int'l, LLC*, 331 Conn. 53, 66 (2019), *cert. denied*, 140 S.Ct. 513 (Nov. 12, 2019). The Revised Second Amended Complaint, filed about two months before Remington's second Notice of Bankruptcy, alleges those claims again, and amends to delete the broader negligent entrustment CUTPA claim, in accordance with the Supreme Court's ruling.

Remington's Second Motion to Strike is an empty exercise for several reasons. The Supreme Court did not afford Remington the opportunity to file a second motion to strike; that alone is a basis for denial. In addition, the Court has already considered and rejected Remington's request-to-revise argument that the plaintiffs must plead with particularity. *See* DN 292.10. Lastly, the Revised Second Amended Complaint conforms to the Supreme Court's ruling and to Connecticut's pleading rules to the letter, and that is all it is required to do. Under our pleading law, the plaintiffs – not Remington – are "master[s] of the complaint." *Reclaimant Corp. v. Deutsch*, 332 Conn. 590, 607 n.17 (2019). Our pleading rules do not require the plaintiffs to prove their claims at the pleading stage. Indeed, the plaintiffs are not permitted to: our pleading rules direct us not to plead evidence.

For these reasons, Remington's Second Motion to Strike must be denied.

I. RELEVANT PROCEDURAL HISTORY

More than six years ago, the plaintiffs began this lawsuit against Remington, alleging, inter alia, that Remington's immoral, unethical, and oppressive marketing practices – all prohibited under CUTPA – were a substantial factor in the Sandy Hook massacre, resulting in the deaths of plaintiffs' decedents: Victoria L. Soto, Dylan Hockley, Mary Joy Sherlach, Noah Pozner, Lauren Rousseau, Benjamin Wheeler, Jesse Lewis, Daniel Barden, and Rachel D'Avino. Remington moved to strike the then-operative complaint (the First Amended Complaint), asserting that the plaintiffs' CUTPA claims must fail under Connecticut law. The Supreme Court rejected its arguments in part, because Connecticut law countenances plaintiffs' wrongful marketing CUTPA claims. Specifically, it held that plaintiffs (1) have standing to bring a CUTPA claim; and (2) PLCAA does not bar plaintiffs from proceeding on the theory that "the defendants violated CUTPA by marketing the XM15-E2S to civilians for criminal purposes, and

that those wrongful marketing tactics caused or contributed to the Sandy Hook massacre." *Soto*, 331 Conn. at 70.

In February 2020, plaintiffs filed a Second Amended Complaint that conformed their CUTPA claims to the Supreme Court's ruling while streamlining the CUTPA allegations. DN 276 at 1. Remington filed a request to revise. As Remingon does here, in the request to revise it argued that the Second Amended Complaint lacked "material" allegations, and that the plaintiffs must be ordered to revise to include more facts. *See* DN 281, *passim.* It argued that the plaintiffs must revise twenty-two paragraphs to "identify with particularity the specific advertisements and marketing activities by Remington that form the basis for the CUTPA claim," DN 281 at 1, and "plead facts establishing a causal link between Remington's alleged conduct and Plaintiffs' alleged damages," *id.* at 5. The Court sustained the plaintiffs' objections to these arguments. DN 292. Remington also requested deletion of Count Eleven, which the plaintiffs agreed to do. Plaintiffs filed a Second Revised Amended Complaint, which is essentially identical to the Second Amended Complaint minus Count Eleven.

Despite the Court's rejection of its Requests to Revise, Remington now repeats the same arguments in its Second Motion to Strike.

II. THE SUPREME COURT'S RULING DOES NOT PERMIT REMINGTON TO FILE A SECOND MOTION TO STRIKE

The Supreme Court's ruling directs that the plaintiffs' wrongful marketing CUTPA claim move forward:

> For the foregoing reasons, we conclude that the trial court properly determined that … PLCAA does not bar the plaintiffs' wrongful marketing claims and that, at least to the extent that it prohibits the unethical advertising of dangerous products for illegal purposes, CUTPA qualifies as a predicate statute. Specifically, if the defendants did indeed seek to expand the market for their assault weapons through advertising campaigns that encouraged consumers to use the weapons not for legal purposes such as self-defense, hunting, collecting, or target practice, but

> to launch offensive assaults against their perceived enemies, then we are aware of nothing in the text or legislative history of PLCAA to indicate that Congress intended to shield the defendants from liability for the tragedy that resulted.
>
> . . . . [T]he case is remanded for further proceedings according to law . . . .

Soto, 331 Conn. at 157-58.[1]

The opinion holds that the plaintiffs' wrongful marketing CUTPA claims are legally sufficient,

> The plaintiffs have offered one narrow legal theory . . . that is recognized under established Connecticut law. Specifically, they allege that the defendants knowingly marketed, advertised, and promoted the XM15-E2S for civilians to use to carry out offensive, military style combat missions against their perceived enemies. Such use of the XM15-E2S, or any weapon for that matter, would be illegal, and Connecticut law does not permit advertisements that promote or encourage violent, criminal behavior. . . .

Id. at 65-66.

Having determined legal sufficiency, the Court indicated that trial – *not* a second motion to strike – is the defendants' next opportunity to challenge the plaintiffs' proof of causation:

> Once we accept the premise that Congress did not intend to immunize firearms suppliers who engage in truly unethical and irresponsible marketing practices promoting criminal conduct, and given that statutes such as CUTPA are the only means available to address those types of wrongs, *it falls to a jury to decide whether the promotional schemes alleged in the present case rise to the level of illegal trade practices and whether fault for the tragedy can be laid at their feet*.

Id. at 157 (emphasis supplied). *See also id.* at 98 ("Proving such a causal link *at trial* may prove to be a Herculean task.") (emphasis supplied).

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[1] Remington cites *Detar v. Coast Venture XXVX, Inc.*, 91 Conn. App. 263, 265 (2005), to establish that the allegations of the First Amended Complaint are "the law of the case." Def. Mem. at 6. Law of the case concerns prior *judicial* decisions. *See Detmar*, 91 Conn. App. at 265, 267 (holding trial court *order* that was not reversed by the Appellate Court was the law of the case). The allegations of the First Amended Complaint are not law of any kind. *Perugini v. Giuliano*, 148 Conn. App. 861, 863 (2014), also cited by the defendants, has no bearing here at all because it is not in a remand posture.

The Court need proceed no further, because the Supreme Court's opinion does not allow Remington a second motion to strike. This motion may be denied on that basis alone.

III. THE SECOND MOTION TO STRIKE MUST BE DENIED BECAUSE THE REVISED SECOND AMENDED COMPLAINT CONFORMS TO THE SUPREME COURT'S RULING AND TO CONNECTICUT'S PLEADING RULES

The Second Motion to Strike must also be denied because the Revised Second Amended Complaint conforms with the Supreme Court's ruling and with Connecticut's pleading standards. The Revised Second Amended Complaint deletes the negligent entrustment allegations, abiding by the Supreme Court's determination that the negligent entrustment and CUTPA-based negligent entrustment claims cannot proceed. (Remington does not dispute either that the plaintiffs were required to remove these allegations or that the plaintiffs have.)

The Revised Second Amended Complaint alleges the wrongful marketing CUTPA claim approved by the Supreme Court, which is the claim that Remington "knowingly marketed, advertised, and promoted the XM15-E2S for civilians to use to carry out offensive, military style combat missions against their perceived enemies." *Id.* at 65-66. It also alleges causation pursuant to the Supreme Court's opinion. The Supreme Court addressed causation in the context of its holding that the plaintiffs have CUTPA standing. *See Soto*, 331 Conn. at 94. The material facts establishing causation are few and simple: "the wrong charged is that the defendants promoted the use of their civilian assault rifles for offensive, military style attack missions. The most

directly foreseeable harm associated with such advertising is that innocent third parties could be shot as a result. The decedents are the ones who got shot." *Id.* at 99.[2]

The Revised Second Amended Complaint alleges that this a civil action for wrongful death stemming from the shooting at Sandy Hook Elementary School on December 14, 2012. DN 301, RSAC ¶ 1. Remington "is the largest purveyor of AR-15s to the civilian market," *id.* ¶ 28, and it marketed the Bushmaster XM15-E2S rifle that was used in the shooting at Sandy Hook Elementary School on December 14, 2012, *id.* ¶ 14.[3]

Remington's AR-15s, including the Bushmaster XM15-E2S, maintain the design, functionality and appearance of their military counterpart, the M16. *Id.* ¶ 29. "Remington marketed its AR-15s, including the XM15-E2S, by promoting their militaristic and assaultive uses." *Id.* ¶ 31. "Remington's militaristic marketing promoted the image of its AR-15s as combat weapons used for the purpose of waging war and killing human beings." *Id.* ¶ 32. It "marketed its sporting and competition rifles with five- and ten-round magazines while marketing its AR-15 rifles with thirty-round magazines." *Id.* ¶ 33. Remington's marketing "glorified the lone gunman," "promoted lone gunman assaults," "glorified the military design, functionality and appearance of its AR-15s," promoted the use of "AR-15s for mass casualty assaults," and

[2] *See also Soto*, 331 Conn. at 99-100 (finding plaintiffs have CUTPA standing); *id.* at 70 ("We further conclude that PLCAA does not bar the plaintiffs from proceeding on the single, limited theory that the defendants violated CUTPA by marketing the XM15-E2S to civilians for criminal purposes, and that those wrongful marketing tactics caused or contributed to the Sandy Hook massacre.").

[3] "[T]he AR-15 was designed for the United States Military to be used in combat." DN 301, RSAC ¶ 24. It was "designed with features that were chosen to maximize casualties and engineered to deliver maximum carnage with extreme efficiency on the battlefield." *Id.* ¶ 25. Its "combination of features resulted in a weapon so lethal that the United States Military adopted the AR-15 as its standard-issue service rifle, renaming it the M16," *id.* ¶ 26, and it "remains the United States Military's weapon of choice today," *id.* ¶ 27.

"promoted criminal use of its AR-15s by its target market," which included "high-risk users." *Id.* ¶¶ 34-39. Remington marketed its AR-15s in this way "knowing that they would be accessed by unscreened consumers," "despite evidence of their increasing use in mass shootings," and "without regard for public safety." *Id.* ¶¶ 40-42.

The plaintiffs' decedents were assaulted and killed in the December 14, 2012 shooting at Sandy Hook Elementary school, in which Remington's XM15-E2S was used. *See id.* ¶¶ 1, 14, 51. Remington's conduct – its promotion of the XM15-E2S's militaristic and assaultive uses, DN 301.00 ¶ 31; its glorification and promotion of lone gunman assaults, *id.* ¶¶ 34-35; and promotion of its AR-15s for mass casualty assaults, ¶ 37; among other alleged conduct – was a substantial factor resulting in the death of each decedent. *Id.* ¶ 51.

The Revised Second Amended Complaint alleges precisely the claim that the Supreme Court approved, and it does so in a streamlined fashion. The Court has already rejected Remington's argument that additional facts should be alleged. *See* DN 292.10 (sustaining plaintiffs' objections to Remington's Request to Revise).[4] For these reasons as well, Remington's Second Motion to Strike must be denied.

[4] In sustaining plaintiffs' objection to Remington's request to revise, this Court concluded that no more particularity was required. *See* Prac. Bk. § 10-35(1) (designating request to revise as procedural vehicle for obtaining "a more complete or *particular statement of the allegations* of an adverse party's pleading" (emphasis added)); *cf.* Prac. Bk. § 10-19(a) (designating motion to strike as appropriate procedural vehicle for challenging the "legal sufficiency" of a complaint). Remington is arguing the exact same thing here – that the plaintiffs must plead with more particularity. But this Court correctly decided the request to revise, and any residual or supplemental argument concerning the particularity of the allegations cannot be raised on a motion to strike. *See* Prac. Bk. § 10-7 ("In all cases, when the judicial authority does not otherwise order, the filing of any pleading provided for by the preceding section will waive the right to file any pleading which might have been filed in due order and which precedes it in the order of pleading provided in that section.").

A. THE SUPREME COURT APPROVED THE PLAINTIFFS' CAUSE OF ACTION, NOT THE SPECIFIC EVIDENCE BY WHICH IT WOULD BE PROVED

The Supreme Court, of course, reached its holdings by applying Connecticut's pleading standard to test the legal sufficiency of the allegations of the First Amended Complaint: "A motion to strike attacks *the legal sufficiency* of the allegations in a pleading[.]" *Soto*, 331 Conn. at 70 n.15 (emphasis supplied) (citation omitted; internal quotation marks omitted). It was not evaluating the sufficiency of the evidence alleged – to do so would be profoundly unfair to parties who have not yet had discovery, and our pleading practice does not permit it. Rather, the Supreme Court was evaluating the pleadings under the standard applicable to pleadings: "[I]f facts provable in the complaint would support a cause of action, the motion to strike must be denied.... Thus, we assume the truth of both the specific factual allegations and any facts fairly provable thereunder[.]" *Id.* (citation omitted; internal quotation marks omitted).[5]

The Supreme Court understood the plaintiffs' wrongful marketing CUTPA claim to be that Remington "violated CUTPA by advertising and marketing the XM15-E2S in an unethical, oppressive, immoral, and unscrupulous manner that promoted illegal offensive use of the rifle." *Id.* at 86. It noted that "[s]pecifically," the plaintiffs "allege that the defendants":

> • promoted use of the XM15-E2S for offensive, assaultive purposes – specifically, for "waging war and killing human beings" – and not solely for self-defense, hunting, target practice, collection, or other legitimate civilian firearm uses;
>
> • extolled the militaristic qualities of the XM15-E2S;

[5] This principle aligns with our general rules of pleading construction: (1) "[w]hat is necessarily implied [in an allegation] need not be expressly alleged"; (2) "all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted"; (3) "pleadings must be construed broadly and realistically, rather than narrowly and technically." *Gazo v. City of Stamford*, 255 Conn. 245, 260-61 (2001).

> • advertised the XM15-E2S as a weapon that allows a single individual to force his multiple opponents to "bow down";
>
> • marketed and promoted the sale of the XM15-E2S with the expectation and intent that it would be transferred to family members and other unscreened, unsafe users after its purchase.

Id. at 86-87. It continued, "[t]he plaintiffs further allege in this regard that such promotional tactics were causally related to some or all of the injuries that were inflicted during the Sandy Hook massacre." *Id.* at 87.[6] The Revised Second Amended Complaint repeats the core factual allegation – that "Remington marketed its AR-15s, including the XM15-E2S, by promoting their militaristic and assaultive uses," DN 301, RSAC ¶ 32, and "promoting the image of its AR-15s as combat weapons used for the purpose of waging war and killing human beings, *id.* ¶ 33.[7]

Likewise, the Supreme Court's opinion dictates that very simple allegations establish causation. Its conclusion concerning foreseeability, the *sine qua non* of proximate cause,[8] is

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[6] *See also Soto*, 331 Conn. at 73 (describing the plaintiffs' contentions as being that Remington has "sought to grow the AR-15 market by extolling the militaristic and assaultive qualities of their AR-15 rifles and, specifically, the weapon's suitability for offensive combat missions," and that "the defendants' militaristic marketing reinforces the image of the AR-15 as a combat weapon that is intended to be used for the purposes of waging war and killing human beings").

[7] It was important to plead evidence as illustration in the First Amended Complaint in order to explain the plaintiffs' wrongful marketing CUTPA claim. Now that the Supreme Court has approved the legal sufficiency of the claim, explaining the claim by including evidence in the pleadings is no longer appropriate. Therefore, the Revised Second Amended Complaint does not re-allege the example of the "Forces of Opposition Bow Down" campaign, because that is evidence of the material facts alleged in Paragraphs 32-33, and our rules of pleading direct us not to allege evidence. *See* Prac. Bk. § 10-1 (directing the plaintiff not to plead evidence).

[8] In *Ruiz v. Victory Properties*, this *Court* identified the test for proximate cause as "whether the defendant's conduct was a substantial factor in producing the plaintiff's injury." *Ruiz v. Victory Properties, LLC*, 315 Conn. 320, 329 (2015) (citations omitted); (internal quotation marks omitted) (emphasis supplied). It explained, "*This substantial factor test reflects the inquiry fundamental to all proximate cause questions, namely, whether the harm [that] occurred was of the same general nature as the foreseeable risk created by the defendant's negligence*." *Id.* (emphasis added) (quoting *Label Sys. Corp.*, 270 Conn. at 321).

emphatic: "[T]he wrong charged is that the defendants' promoted the use of their civilian assault rifles for offensive, military style attack missions. The *most directly foreseeable harm* associated with such advertising is that innocent third parties could be shot as a result. The decedents are the ones who got shot." *Soto,* 331 Conn. at 99 (emphasis supplied).

The Supreme Court's views concerning proximate and actual cause are both contained in the quotation above. Foreseeability undergirds proximate cause; directness supports actual cause. The mass deaths caused by the offensive use of an AR-15 against civilians are "the most directly foreseeable harm" caused by marketing campaigns glorifying such uses. As the Supreme Court explained: "The gravamen of a wrongful advertising claim … is that an advertisement models or encourages illegal or unsafe behavior." *Id.* The illegal behavior that was modeled was precisely what was enacted at Sandy Hook Elementary School on December 14, 2012. That connection alone sufficiently establishes actual cause in this context.[9]

Because Remington obfuscates on this point, we emphasize that the Supreme Court did not formulate any rule about how the plaintiffs will establish actual cause, an approach that reflects Connecticut courts' usual treatment of actual cause. Actual cause considers whether the plaintiff's injury "would *not* have occurred *in the precise way that it did* without the defendant's conduct." *Shegog v. Zabrecky*, 36 Conn. App. 737, 745 (1995) (emphasis added) (citing *Coste*, 24 Conn. App. at 113); *see also Theodore v. Lifeline Sys. Co*., 173 Conn. App. 291, 310 (2017)

[9] Of course, the plaintiffs can go back and re-plead all of the causation facts alleged in the First Amended Complaint – and they will do so, if the Court requires it. But requiring us to do so would be improper and inconsistent with the Supreme Court's formulation of the *material* factual allegations establishing causation*,* as well as with our pleading rules' direction not to plead evidence.

(same). Actual cause is so expansive – so "virtually limitless"[10] – that at the pleading stage it is typically assumed.[11] Nonetheless, the Revised Second Amended Complaint does not require that the Court assume anything. It alleges that Remington's conduct – its promotion of the XM15-E2S's militaristic and assaultive uses, DN 301.00 ¶ 31, its glorification and promotion of lone gunman assaults, *id.* ¶¶ 34–35, and promotion of its AR-15s for mass casualty assaults, ¶ 37, among other alleged conduct – was a substantial factor resulting in the decedents' deaths in the mass shooting at Sandy Hook Elementary School on December 14, 2012. *See* DN 301.00, RSAC, ¶ 1, 51.

Remington's goal has been, is, and will be to narrow the plaintiffs' legal claims and elevate the plaintiffs' burden of proof. Our pleading rulings do not allow that, and neither does the Supreme Court's opinion. The opinion conveys – consistent with the fact that actual cause is "virtually limitless" – the significant latitude the plaintiffs have in proving causation. Causation may be:

- "encourage[ment]," *Soto*, 331 Conn. at 158 ("[I]f the defendants did indeed seek to expand the market for their assault weapons through advertising campaigns *that encouraged consumers* to use the weapons not for legal purposes such as self-defense, hunting, collecting, or target practice, but to launch offensive assaults against their perceived enemies, then we are aware of nothing in the text or legislative history of PLCAA to indicate that Congress intended to shield the defendants' from liability for the tragedy that resulted.") (emphasis supplied). *Id.* at 99 ("encourages illegal or unsafe behavior");

- *or* "model[ing] … illegal or unsafe behavior," *id.* at 99;

[10] "Because actual causation, in theory, is virtually limitless, the legal construct of proximate cause serves to establish how far down the causal continuum tortfeasors will be held liable for the consequences of their actions." *Ruiz*, 315 Conn. at 329.

[11] *See Coste*, 24 Conn. App. at 113 ("Most cases . . . *assume* that cause in fact exists.") (emphasis added) (citing *Cardona v. Valentin,* 160 Conn. 18 (1970); *Vastola v. Connecticut Protective System, Inc.,* 133 Conn. 18 (1946)).

- *or* "emulat[ion]," *id.* at 99 (consumers of wrongful marketing materials may "emulate the [dangerous activity in the] commercial when driving their own vehicles, violating motor vehicle laws, and possibly causing injury to themselves or others, including passengers or pedestrians.");

- *or* an unspecified "causal[] relat[ion]," *id.* at 87 ("The plaintiffs further allege in this regard that such promotional tactics were causally related to some or all of the injuries that were inflicted during the Sandy Hook massacre.");

- *or* a "magnifi[cation of] the lethality of the Sandy Hook massacre," *id.* at 98;

- *or* "inspiring" the shooter, *id.* at 98;

- *or* "causing [the shooter] to select a more efficiently deadly weapon for his attack," *id.* at 98;

- *or* that "a defendant's marketing efforts create a new market among individuals known to be likely to engage in criminal activity who, but for the defendant's efforts, would be less likely to purchase a weapon . . . with the firepower of the defendant's," *id.* at 98 n.30. (citation omitted; internal quotation marks omitted).

While the Supreme Court speculated that "[p]roving such a causal link at trial may prove to be a Herculean task," *id.* at 98, *it also gave the plaintiffs a free hand to carry out that task*. Remington is so concerned that the plaintiffs will succeed in this task that it asks the Court to ignore the Supreme Court's opinion and tie the plaintiffs' hands.

If anything, the Revised Second Amended Complaint is better aligned with Connecticut's pleading standards than the First Amended Complaint. "The purpose of pleading is to apprise the court and opposing counsel of the issues to be tried." *Faulkner v. United Technologies Corp., Sikorsky Aircraft Div*., 240 Conn. 576, 589, (1997). Practice Book§ 10-1 requires the plaintiff to allege a "plain and concise statement of the material facts," and *not* to plead evidence. *Id.* Our trial courts point out that "[t]he defendant is not entitled to know the plaintiff's proof but only what he claims as his cause of action." *Talbot v. Kirkwood*, 2004 WL 1153747, at *1 (Conn. Super. May 4, 2004) (Bryant, J.); *Kileen v. Gen. Motors Corp*., 36 Conn. Supp. 347, 348-49 (1980) (Mancini, J.) (same). The Revised Second Amended Complaint notifies Remington of

what the plaintiffs claim as their cause of action. That is all it is entitled to know through the pleadings.

B. REMINGTON'S OTHER LEGAL ARGUMENTS ARE INAPPOSITE

Remington makes a series of arguments that fail to understand both Connecticut pleading standards and the Supreme Court's opinion. It argues that because plaintiffs do not explicitly use the language, "but for," in their allegations supporting causation that they "*do not even attempt* to plead cause in fact." DN 311, Def. Mem. at 11 (emphasis in original). As shown above, the Revised Second Amended Complaint is the result of very careful consideration of the Supreme Court's opinion. We note as well that the First Amended Complaint alleged substantial factor, and the Supreme Court found that sufficient. The Revised Second Amended Complaint thus alleges substantial factor.[12]

Remington suggests that the Revised Second Amended Complaint is insufficient because it does not identify the shooter by name, DN 310, Def. Mem. at 2. This argument, resurrected from Remington's unsuccessful Request to Revise, *see* DN 281, Req. to Rev. at 7 ("Indeed, Adam Lanza is *not even mentioned* in the SAC.") (emphasis in original), again lacks any citation to authority supporting the proposition. The shooter's name is not material to plaintiffs' legal claim, and there is no requirement that plaintiffs plead it.

As it did in its Request to Revise, Remington again relies on inapplicable federal pleading standards, attempting to avoid Connecticut's pleading standards. Def. Mem. at 7-8. The

[12] In addition, Remington cites no authority to support its claim that talismanic "but for" language is required to allege causation. None of the three cases it cites even involve a motion to strike. *See* Def. Mem. at 10 (citing *Haesche v. Kissner*, 229 Conn. 213 (1994) (considering motion for summary judgment); *Stevenson Lumber Co.-Suffield, Inc. v. Chase Assocs*., *Inc*., 284 Conn. 205 (2007) (considering appeal of bench trial judgment); *Calandro v. Allstate Ins. Co*., 63 Conn. App. 602 (2001) (same)).

cases Remington cites refer to the federal plausibility standard, without claiming that it has been adopted in Connecticut. *See Coleman v. Comm'r of Corr*, 137 Conn. App. 51, 57 (2012) (discussing and applying federal plausibility standard), *Edelman v. Laux*, 2013 WL 4504793, at *4, *19 (Conn. Super. Ct. July 26, 2013) (discussing federal plausibility standard and applying in analysis of qualified immunity), and *Bonner v. City of New Haven*, 2017 WL 6030702, at *4 n.3 (Conn. Super. Ct. Nov. 16, 2017) (applying heightened pleading standard and noting that there has been "no Connecticut appellate adoption of the plausibility test with respect to motions to strike."). The correct standard is Connecticut's longstanding, liberal standard – as are articulated by the Supreme Court in its decision in this case.

Remington relies on *Abrahams*, *Coste*, *Boehm*, and *Builes* in support of its argument that the plaintiffs should be required to plead more facts to establish cause in fact and proximate cause. Def. Mem. at 8-9. *Abrahams v. Young & Rubicam, Inc*., 240 Conn. 300, 307-08 (1997), hinges on the plaintiff's failure to establish foreseeability, and consequent failure to establish proximate cause – it points only to the need to plead facts establishing foreseeability, which the plaintiffs have clearly done. *Boehm v. Kish*, 201 Conn. 385, 388 (1986), does not support Remington's argument, because it involves a post-trial analysis of the evidence introduced at trial, not review of the pleadings. *Coste* supports the plaintiffs' position. It reasons that "[m]ost cases . . . *assume* that cause in fact exists," and then does that; its holding concerns proximate cause. *Coste*, 24 Conn. App. at 113 (emphasis added). *Builes* held that the plaintiff's complaint was insufficient because it failed to properly plead ascertainable loss, not causation. *Builes v. Kashinevsky*, 2009 WL 3366265, at *6 (Conn. Super. Sept. 15, 2009) (Bellis, J.).

Remington then cites *Paige*, *Kumah*, *D'Angelo Development* and *Coste* in support of its argument that the plaintiffs' proximate cause allegations are insufficient. Def. Mem. at 14-15.

Three of the four cases – *Paige*, *Kumah*, *D'Angelo Development* – addressed sufficiency of evidence, not pleadings. *See Paige v. Saint Andrew's Roman Catholic Church Corp*., 250 Conn. 14, 16 (1999) (appeal of sufficiency of evidence supporting jury's factual findings); *Kumah v. Brown*, 130 Conn. App. 343, 344 (2011) (appeal of entry of summary judgment for defendant truck driver); *D'Angelo Dev. & Const. Corp. v. Cordovano*, 121 Conn. App. 165, 168 (2010) (appeal of judgment after bench trial). *Coste* – the only case cited by Remington that was actually decided on a Motion to Strike – actually supports the the plaintiffs' position, in that it acknowledges that "[m]ost cases . . . *assume* that cause in fact exists." *Coste*, 24 Conn. App. at 113 (emphasis added).

In its earlier Request to Revise, Remington included a string cite, which it claimed required the plaintiffs to plead CUTPA violations "with particularity." It seems to have recognized that argument is untenable, and now recycles these citations to support the claim that "many" courts have held that "bare legal conclusions," alone, cannot satisfy Connecticut's pleading requirements for causation. Def. Mem. at 15-16 (citing, again, *Travelers Indem. Co. v. Cephalon, Inc*., 620 F. App'x 82, 87 (3d Cir. 2015); *Nwachukwu v. Liberty Bank*, 257 F. Supp. 3d 280, 303 (D. Conn. 2017); *Von Pein v. Magic Bristles, LLC*, 2013 WL 453048, at *7 (Conn. Super. Ct. Jan. 8. 2013); *Patterson v. Sullo*, 2012 WL 4040259, at *6 (Conn. Super. Ct. Aug. 20, 2012); *Heath v. Micropatent*, 1999 WL 1328140, at *3 (Conn. Super. Ct. Dec. 30, 1999).

Remington is barking up the wrong tree. The Supreme Court's conclusions concerning causation in this case is by far the most relevant authority – and the Supreme Court's ruling dictates that the simple facts alleged in the Revised Second Amended Complaint suffice. And, as noted in the plaintiffs' objection to Remington's Request to Revise, each of these cases are distinguishable because they either (1) involved CUTPA claims that relied entirely on breach of

contract allegations that require conduct in addition to breach to be alleged, or (2) applied an inapplicable federal pleading requirement. *See Travelers Indem. Co. v. Cephalon, Inc*., 620 F. App'x 82, 86 (3d Cir. 2015) (holding that plaintiffs failed to "state *with particularity* the circumstances constituting fraud or mistake" to support CUTPA claim, as required by Rule 9(b) of the FRCP) (emphasis added); *Nwachukwu v. Liberty Bank*, 257 F. Supp. 3d 280, 303 (D. Conn. 2017) (applying federal plausibility pleading standard and holding that plaintiff failed to sufficiently allege that the unlawful closing of bank account constituted an ascertainable loss under the FRCP); *Heath v. Micropatent*, 1999 WL 1328140, at *3, *6 (Conn. Super. Dec. 30, 1999) (Silbert, J.) (holding that plaintiff's CUTPA allegations failed to allege fraud with specificity required by *Maruca v. Phillips*, 139 Conn. 79 (1952)); *see also Von Pein v. Magic Bristles, LLC*, 2013 WL 453048, at *4, *7 (Conn. Super. Jan. 8, 2013) (Doherty, J.) (holding that plaintiffs failed to plead "aggravating unscrupulous conduct" necessary to support CUTPA claim based on violations of the Home Improvement Act)); *Patterson v. Sullo*, 2012 WL 4040259, at *1, *5 (Conn. Super. Aug. 20, 2012) (Martin, J.) (same).

To bolster their resurrected argument, Remington added citations to *Buchanan*, *Podesse*r, *Hull* and *Kent* to their string cite. But Remington's reliance on these cases is misplaced. First, contrary to defendant's assertion in their Memorandum of Law, *see* DN 311, Def. Mem. at 17 (citing *Kent* as "granting motion to strike CUTPA claim"), *Kent* did not even consider an alleged CUTPA violation, as noted in the first sentence of the opinion. *See Kent v. Sartiano*, 1998 WL 661520, at *1 (Conn. Super. Sept. 11, 1998) (Levin, J.) ("The defendants move to strike counts one, three and four of the amended complaint, which seek relief pursuant to General Statutes §§ 31-51m et seq.").

The remaining three citations are also inapposite. *See Buchanan v. Greenwich Hosp.*, 2011 WL 7064250, at *3 (Conn. Super. Dec. 28, 2011) (Agati, J.) (holding that the plaintiffs' claims that they "would have found information regarding [the surgeon's] drug addiction *relevant* in assessing the hospital's marketing claims and decision to undergo surgery" failed to allege a sufficient causal nexus between the purported public policy CUTPA violations and the plaintiff's injuries (emphasis added)); *Podesser v. Lambert & Barr, LLC*, 2007 WL 2363310, at *1 (Conn. Super. July 25, 2007) (Thim, J.) (applying typical pleadings standards and finding proximate cause not alleged); *Hull v. Nicholas*, 2005 WL 2741845, at *3 (Conn. Super. Ct. Oct. 7, 2005) (applying typical pleading standards and finding proximate cause not alleged).

CONCLUSION

For all these reasons, the Second Motion to Strike must be denied.

THE PLAINTIFFS,

By: /s/ Alinor C. Sterling

Joshua D. Koskoff
Alinor C. Sterling
Jeffrey W. Wisner
KOSKOFF KOSKOFF & BIEDER
350 Fairfield Avenue
Bridgeport, CT 06604
Tel: (203) 336-4421
Fax: (203) 368-3244
jkoskoff@koskoff.com
asterling@koskoff.com
jwisner@koskoff.com

H. Christopher Boehning (*pro hac vice*)
Jacobus J. Schutte (*pro hac vice*)
1285 Avenue of the Americas
New York, NY 10019-6064
cboehning@paulweiss.com
jschutte@paulweiss.com

Their Attorneys

CERTIFICATION OF SERVICE

This is to certify that a copy of the foregoing has been emailed this day to all counsel of record as follows:

Paul D. Williams
James H. Rotondo
Jeffrey P. Mueller
DAY PITNEY LLP
242 Trumbull Street
Hartford, CT 06103
pdwilliams@daypitney.com
jhrotondo@daypitney.com
jmueller@daypitney.com

James B. Vogts (*pro hac vice)*
Andrew A. Lothson (*pro hac vice*)
SWANSON MARTIN & BELL, LLP
330 North Wabash, #3300
Chicago, IL 60611
jvogts@smbtrials.com
alothson@smbtrials.com

COUNSEL FOR:
BUSHMASTER FIREARMS INTERNATIONAL LLC, A/K/A;
FREEDOM GROUP, INC., A/K/A;
BUSHMASTER FIREARMS, A/K/A;
BUSHMASTER FIREARMS, INC., A/K/A;
BUSHMASTER HOLDINGS, INC., A/K/A;
REMINGTON ARMS COMPANY, LLC, A/K/A;
REMINGTON OUTDOOR COMPANY, INC., A/K/A

/s/ Alinor C. Sterling_____
Joshua D. Koskoff
Alinor C. Sterling
Jeffrey W. Wisner